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Suggestions for Potential Property Tax Appeal Reforms

To the House Study Committee on Reforming Real Property Taxation

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Generally, the local property tax appeals process is inefficient and problematic for large Georgia taxpayers. Although the 2016 amendments to the appeals process, enacted through HB 202, made improvements to the law, the law does not fully achieve the intended goal of protecting taxpayers' rights and increasing out of court settlements. Although the legislature provided new administrative appeal options, these options do not cover all types of business property, and the law for appealing the administrative decisions to superior court was not updated accordingly.

The portion or the law on appeals to court does not deal directly with the now more common scenario of a taxpayer prevailing at the administrative level, and the county board of assessors choosing to appeal. The law provides insufficient safeguards against a county indiscriminately appealing reasoned rulings in favor of the taxpayer. There is also little motivation to expedite the resolution of appeals. Attorney fees are unavailable and interest is capped.

Additionally, there are shortcomings in the administrative process and settlement conferences. For many complex appraisals, there is little recourse for aggrieved taxpayers short of court. For personal property—such as manufacturing machinery or high-tech equipment—a taxpayer may face identical issues in multiple Georgia counties on an annual basis.

Below are some detailed suggestions for addressing these problems through prospective legislative changes to the current property tax appeal statute:

1. **Administrative Appeals: Alternatives to Board of Equalization for Complex Cases**

    a. Allow taxpayers the option to appeal assessments of all personal property valued (in aggregate) over $500,000 to either a hearing officer or the board of equalization.

    b. Currently, the hearing officer procedure is only available for real property over $500,000 and wireless property. O.C.G.A. § 48-5-311(e.1)(1). This procedure could be available to *all* personal property.

    c. Hearing officers are trained appraisers capable of making value determinations on complex business properties. Currently, the hearing officers must be certified real estate appraisers, but could be expanded to allow hearing officers certified by the American Society of Appraisers.

2. **Restrict Court Appeals by the County Boards of Assessors**

    a. Counties should not be able to appeal the finding of a hearing officer on valuation issues. They are independent third party, certified appraisers.

        i. There is no disincentive for a county to not appeal an adverse hearing officer ruling, nor is there sufficient incentive for a county to prepare a robust case to present to the hearing officer.

ii. Other states, such as New York, have more taxpayer protections that do not allow counties to appeal the independent appraisers' ruling.

b. Create higher thresholds for approval before a county can appeal an adverse administrative ruling.

i. Under current law, a county boards of assessors may not appeal an administrative decision changing the assessment by 20% or less, without first giving the county governing authority written notice of its intention of appealing (and the county governing authority does not prohibit the appeal). O.C.G.A. § 48-5-311(g)(1)

ii. This 20% threshold should be higher, and/or it should require the *affirmative* approval of the governing authority.

iii. This could also allow for nuances in situations where the issue on appeal is not valuation but an exemption or taxability.

3. Attorney Fees Should Be Recoverable in All Cases to Avoid Unnecessary Litigation

a. Current law does not allow a taxpayer who wins at the administrative level to recover attorney fees for defending against a county's appeal in court.

b. Attorney fees should be available in ALL cases, not just those cases where the taxpayer is appealing.

i. Current law requires the taxpayer receive attorney fees/litigation costs if the final determination of value is 85% of the valuation set at the administrative appeal level. O.C.G.A. § 48-5-311(g)(4)(B)(ii).

ii. If the taxpayer wins at the administrative level, then under current law it may not be able to recover attorney fees even if it successfully defends that value against the county appeal in court. A county may appeal without fear that it will be forced to pay attorney fees.

c. Current law does not allow a taxpayer who wins an exemption issue (as opposed to a valuation issue) to recover attorney fees. Attorney fees should be available in any case, not just those in which valuation (as opposed to an exemption or taxability or at issue).

i. In *Clayton County Board of Tax Assessors v. City of Atlanta*, 299 Ga. App. 233, 235 (2009), the Georgia Court of Appeals concluded that the current law does not permit an award of attorney fees or litigation costs where the sole issue is taxability.

d. Adding the deterrent of attorney fees would increase out of court settlements and institute standard hazards of litigation to avoid litigating weak or especially risky positions.

e. In conjunction with the requirement for boards of assessors to receive affirmative approval of appeals from the county governing authority, these hazards of litigation would need to be more carefully considered and calculated, rather than the taxpayer bearing all the hazards of litigation.

4. Interest Should Continue to Accrue During the Course of an Appeal

a. The current cap on interest is not justified.

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i. Current law limits interest on payments in excess of the finally determined amount due to $150.00 for homestead property or $5,000.00 for nonhomestead property.

ii. Without interest continuing to accrue on refunds eventually due to taxpayers, counties get an essentially interest free loan during the course of the appeal, regardless of the merit of the taxpayer's position.

b. The cap on interest eliminates any exigency for a county to conclude a pending appeal, and eliminates another potential hazard to litigation. Taxpayers should be paid full interest if they are forced to litigate a county's assessment that is later ruled excessive.

5. Making Settlement Conferences More Effective

a. Currently, settlement conferences, which are now required before any case gets certified to the superior court, are largely perfunctory.

b. The Legislature should consider options on how to make these conferences more meaningful—either by defining what conferring in "good faith" requires or promulgating more procedures for the required settlement conference.

c. Settlement conferences should be required regardless of which party appeals. Counties are interpreting the language "**Within 45 days of receipt of a taxpayer's notice** of appeal and before certification of the appeal to the superior court, the county board of tax assessors shall send to the taxpayer notice that a settlement conference, in which the county board of tax assessors and the taxpayer shall confer in good faith . . ." to apply only to a taxpayer's notice of appeal.

6. Tax Tribunal Jurisdiction for Certain Cases

a. The business community often fears that local property tax appeals processes heavily favor the counties. Many states allow at least an option for appeals from the local administrative level to a statewide body.

i. The Tribunal may have capacity for a larger caseload and is equipped to consider complex valuation and exemption evidence and decide these cases.

ii. The Tribunal already has jurisdiction over centrally assessed property tax cases.

b. The Tribunal, in conjunction with the Department of Revenue, could also establish rules to streamline the process and also help establish rules for accountability for county boards of assessors, as this Committee has previously discussed.

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